

Fair Political Practices Commission

Memorandum

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh & Remy

From: Emelyn Rodriguez, Commission Counsel, Legal Division
Scott Hallabrin, General Counsel

Subject: Supplemental Memorandum on Regulation 18530.4 – Relating to Legal Defense Funds

Date: October 30, 2007

This responds to a comment letter received from James C. Harrison dated September 26, 2007 (see attached letter).

Section 85304:

Section 85304(a) states, “A candidate for elective state office or an elected state officer may establish a separate account to defray attorney’s fees and other related legal costs *incurred for the candidate’s or officer’s legal defense*, if the candidate or officer is subject to one or more, civil or criminal proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer’s governmental activities and duties. These funds may be used only to defray those attorney fees and other related legal costs.” (Emphasis added.)

Legal fees from subpoenas or requests for interview with law enforcement:

Mr. Harrison’s letter proposes a modification to Regulation 18530.4 to allow state candidates and officeholders to establish a legal defense fund “if the candidate or officer is subject *to* one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of an officer’s governmental activities and duties. (Section 85304, emphasis added.)” Mr. Harrison states in his letter that, “Section 85304 is not limited to a situation where the officeholder is the subject *of* a civil, criminal, or administrative proceeding, i.e. the target. Rather, it encompasses a situation where the officeholder is subject *to* a civil, criminal, or administrative proceeding, as would be the case, for example, if a subpoena were served on a candidate or officer to testify in such a proceeding.”

Section 85304 states that the legal defense fund account may be established to defray attorney’s fees and other legal costs “*incurred for the candidate’s or officer’s legal defense....*” (Emphasis added.) Therefore, these accounts may only be established, and the funds used for, a civil, criminal or administrative proceeding related to the candidate or officer’s legal defense, such as when a candidate or officer is the target of such a proceeding.

Furthermore, the civil or criminal proceedings must arise “directly out of the conduct of an election campaign, the electoral process, or the performance of *the* officer’s governmental

activities and duties,” not the performance of “*an* officer’s governmental activities and duties,” (emphasis added) as stated in the letter.

Thus, for instance, when a state candidate or officer is called to testify as a witness in a civil or criminal case against another official, the candidate or officer would not be incurring attorney’s fees or other legal costs for his or her “legal defense” pursuant to Section 85304. These expenses do not fit the language of the statute, and therefore, cannot be used to establish a legal defense fund, nor can funds from an existing legal defense fund be used to pay for these expenses. For these reasons, staff recommends that the Commission not incorporate Mr. Harrison’s suggested language into the proposed regulation.